

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
August 7, 2009 Session

**WHEELER'S FAMILY HOMES, INC. v. LAWRENCE D. McCLENDON,  
TRUSTEE ET AL. FOR MOUNTAIN VALLEY BANK (FORMERLY  
SEQUATCHIE COUNTY BANK)**

**Appeal from the Chancery Court for Sequatchie County  
No. 1879 Jeffrey F. Stewart, Chancellor**

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**No. M2008-02799-COA-R3-CV - Filed October 14, 2009**

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Appeal from a finding of civil contempt against Wheeler's Family Homes, Inc. for its failure to abide by an Agreed Order, which required it to construct a roadway across its property to afford ingress and egress to the adjoining property. The only defense to the motion for contempt asserted by Wheeler's is that the movant, who was a party to the Agreed Order, allegedly lost standing to enforce the Agreed Order when he subsequently sold his interest in the adjoining property. We find the movant had standing when the hearing on the motion occurred as that party had already reacquired a portion of property that would be benefitted by Wheeler's compliance with the Agreed Order. Therefore, we affirm the trial court's finding that Wheeler's was in civil contempt for its failure to abide by the obligations of the Agreed Order.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Christopher T. Varner and Joseph W. Dickson, Chattanooga, Tennessee, for the appellant, Wheeler's Family Homes, Inc.

Edwin Z. Kelly, Jr., Jasper, Tennessee, for the appellees, Lawrence D. McClendon, Trustee, and Stephen T. Greer, Trustee, for Mountain Valley Bank (formerly Sequatchie County Bank).

## MEMORANDUM OPINION<sup>1</sup>

This action originated in Sequatchie County Chancery Court when Wheeler's Family Homes ("Wheeler's"), the Appellant, filed suit to establish a private easement across adjoining property and to construct a roadway upon the easement for ingress and egress. The property adjoining Wheeler's property was owned by defendants Lawrence McClendon, Trustee, and Stephen Greer, Trustee.<sup>2</sup> The defendants asserted that Wheeler's was not entitled to a private easement, as it already possessed a prescriptive easement across the property.

On May 13, 2002, the parties entered into an Agreed Order pursuant to which McClendon was to execute a warranty deed conveying a 50-foot tract of property to Wheeler's on which Wheeler's was ordered to construct a roadway that would terminate at a "common line between the properties of Wheeler's Family Homes, Inc., Lawrence D. McClendon, Trustee, and Mountain High Corporation." Pursuant to the order, Wheeler's had one year from the entry of the order to construct the roadway. The roadway was to be constructed in accordance with Sequatchie County Highway Department requirements and specifications. Following construction, the roadway was to be dedicated to Sequatchie County for public use; however, if that did not occur, then Wheeler's was required to either execute and deliver to McClendon a deed for a "non-exclusive, permanent, and perpetual easement" of fifty-feet.

Wheeler's, however, failed to fulfill its obligations under the Agreed Order. Specifically, Wheeler's failed to construct the roadway. Therefore, five years after the Agreed Order was entered, on November 15, 2007, McClendon filed a Motion for Contempt in which it asserted that Wheeler's was in contempt of court for its failure to construct the roadway as required by the Agreed Order. Following a hearing on the motion, the trial court issued an order finding Wheeler's in civil contempt for its failure to construct the roadway as required by the Agreed Order. The court ordered Wheeler's to comply with the order. Wheeler's filed a timely appeal from that order.

## ANALYSIS

It is undisputed that Wheeler's has failed to comply with the Agreed Order. Nevertheless, Wheeler's contends that McClendon lacked standing to assert that it is in contempt; thus, it should

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<sup>1</sup>Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

<sup>2</sup>Audrey Sullivan, Trustee, was an original defendant but he died while the litigation was pending and he was succeeded by Lawrence McClendon as Trustee.

not have been held in contempt. Wheeler's contends McClendon lacks standing because he sold his interest in the property which was the subject of the Agreed Order in April 2006 to Donald E. Nichols, Trustee.<sup>3</sup>

Prior to the hearing on the motion for contempt McClendon reacquired an interest in the property adjacent to Wheeler's property that was to benefit from the roadway Wheeler's was obligated to construct. The property reacquired by McClendon did not constitute the entirety of the property he owned at the commencement of this action; however, McClendon did acquire a tract of land adjacent to Wheeler's property at the point where the roadway to be constructed by Wheeler's connected with the adjacent property owned by McClendon.

When the motion for contempt came on for hearing, Wheeler's made an oral motion to dismiss the Motion for Contempt. The trial court denied the motion to dismiss and proceeded to conduct a hearing on the motion for contempt against Wheeler's. Following the hearing, the trial court found Wheeler's in contempt of court for failing to comply with the Agreed Order and again ordered Wheeler's to comply with the Agreed Order. We find no error with the trial court's decisions.

Wheeler's relies on this Court's ruling in *Gonzalez v. Armistead*, No. M2006-02643-COA-R3-CV, 2008 WL 933489 (Tenn. Ct. App. April 7, 2008) to contend that McClendon lacked standing. We, however, find *Gonzalez* distinguishable from the facts of this case because Mr. Gonzales sold his entire interest in the property at issue prior to the hearing and he never reacquired an interest in the property. Thus, at the hearing, Gonzalez did not have an interest in the property and did not have standing. Here, however, McClendon owned an interest in the property that was the subject of and which would be benefitted by the Agreed Order when the case came on for hearing.

It is undisputed that McClendon had standing when the Agreed Order was entered into by the parties, and while McClendon may not have had standing when the motion for contempt was filed, this circumstance was cured when McClendon reacquired a portion of the property prior to the hearing. Thus, at the time of the hearing, McClendon had standing, as the trial court correctly found. We, therefore, affirm the trial court in all respects.

#### FRIVOLOUS APPEAL

McClendon has asked this court to declare Wheeler's appeal frivolous and award damages in the form of attorneys' fees. In order to find an appeal frivolous, the appeal must be wholly without merit and lacking in justiciable issues. *See Davis v. Gulf Ins. Group*, 546 S.W.2d 583, 586 (Tenn. 1977). We do not find Wheeler's appeal wholly without merit and, therefore, deny the request.

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<sup>3</sup> On appeal, Wheeler's does not take issue with the contempt proceedings being raised by motion; therefore, it is not at issue in this appeal.

### **IN CONCLUSION**

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Appellant.

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FRANK G. CLEMENT, JR., JUDGE